

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING: SOUTH AFRICA

- Centre for Environmental Rights in Cape Town, South Africa (SA).
- Environmental law clinic and a non-profit organisation established in October 2009 by 8 prominent civil society organisations (CSOs) in SA's environmental and environmental justice sector. We provide legal and related support to environmental CSOs and communities. The Centre aims to advance environmental rights in SA, and our vision is to facilitate civil society participation in environmental governance that is stronger, more streamlined, and better legally and scientifically equipped.
- Our main tools are case-work, including litigation, and legal advocacy
- One of our 4 broad programmes of work is promoting participation: to facilitate civil society participation in environmental decision-making. This includes Parliamentary monitoring, legislative submissions, and support for participation in licensing processes

Key partners

- Founding members: 8 prominent CSOs in SA's environmental and environmental justice sector – Biowatch Trust, BirdLife SA, Endangered Wildlife Trust; Environmental Monitoring Group Trust; groundWork, Table Mountain Fund, Wildlife and Environment Society of South Africa, Wilderness Foundation, WWF SA
- Many other organisations – Centre for Applied Legal Studies, Earthlife Africa, ELA-SA, Federation for a Sustainable Environment, South Durban Community Environmental Alliance, Vaal Environmental Justice Alliance, Lawyers for Human Rights, Legal Resources Centre, National Association of Conservancies of South Africa, Open Democracy Advice Centre, South Africa History Archive, IAIA-SA etc
- Expert panel of natural and social scientists
- Key environmental law practitioners and advocates
- Law schools and academics

Legislation

- SA has a progressive Constitution that guarantees environmental rights, and comprehensive environmental legislation that makes extensive provision for public participation (pp) in environmental policy and decision-making.

Challenges

- Some serious problems with pp
- There is insufficient detail in legislation re meaningful tools/methods, processes for practical achievement of pp.
- Publication of pp processes in newspapers often not appropriate means to inform interested and affected parties, especially those who are illiterate and/or reside in remote places
- Public is generally regarded as being incapable of making meaningful contributions. Propensity for project proponents and government departments to presume to know not only what is sustainable, but also what is in citizens' best interest
- Pp often viewed as hampering decision-making progress and socio-economic development

- The public is only notified of the project after the application for authorisation has been made i.e. when a decision has already been made regarding design and location
- Large amounts are spent on research and development, without consulting the users or the public, and the proposal presented as a *fait accompli*. Most alternatives provided in justifying the chosen option are thus pseudo-alternatives.
- This is exacerbated by the fact that, although they are required to be independent, environmental assessment practitioners – who are paid by the proponents – generally seem to regard it as their duty to obtain the authorisation
- There is no opportunity to participate after the approval or rejection of the authorisation - only to appeal.
- But most impacts only become clear once project implementation begins. At this stage, it is difficult for the public to ensure that the proponent sticks to the design and procedures approved on authorisation.
- Although there is access to information legislation, most bodies that hold environmental information – both public and private – not only fail to facilitate, but actively avoid or delay giving civil society access to information required for the exercise of their environmental rights
- The reports are mostly complicated, technical documents that require experts to translate them into understandable language. There is also no obligation to make the reports and documents available in the language of choice of interested and affected parties.
- Often, despite detailed public inputs, there is no difference between draft and final reports. There is very little indication that pp actually changes the quality of the decision made.
- Usually, there is no financial assistance offered for communities to attend Parliament to make submissions on legislation
- Every year, various departments publish documents requiring public comments in December when most people are on leave. This makes consultation with partners, clients and experts almost impossible
- It is clear that government is producing many documents, but not consulting before doing so. This is despite the wealth of experience and expertise amongst communities and various NGOs

Overcome

- Use media statements, letters, reports to highlight that democratic involvement and participation in decision-making improves the legitimacy of environmental decisions, and makes their implementation more effective
- Demand extension of time periods to comment. Government cannot realistically ignore input, particularly from the organisations we represent.
- Request meetings with government departments to explain concerns and hear plans so that we, our partners and our clients can be better prepared
- Take cases to court, where necessary

Missing resources and partners

- Government, particularly the Department of Environmental Affairs, should regard themselves as our partner, as we should have the same goals – unfortunately there is a tendency for government to regard industry as a partner and not communities and NGOs.
- We need more expert assistance. But we do not always have substantial – if any - funds available to pay scientists to evaluate technical documents, or advocates to argue cases in court

Conclusion

- In conclusion, despite quite comprehensive legislation on pp, implementation is lacking.
- Excited to be here to have the opportunity to learn from your experiences.